IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

Crl.Rev.Pet.No. 4468 of 2006(C)

CRA.293/2000 of ADDL. SESSIONS COURT (ADHOC), TRIVANDRUM
CC.570/1998 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, TRIVANDRUM

.....

REVN. PETITIONER: APPELLANT/ACCUSED

V.CHANDRAN, AGED 44 YEARS,
S/O.VELUKUTTY, PEON, OFFICE OF THE ADDL.
DIRECTOR OF INCOME-TAX, INVESTIGATION SECTION,
KOWDIAR P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.P.V.ANIL

RESPONDENTS: COMPLAINANT AND STATE

---

1. A.V.RAJESH, T.C.NO.27/1368,
CHIRAKKULAM, STATUE ROAD, THIRUVANANTHAPURAM.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M.KAMAPPU

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 22/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.R.P.No.4468 of 2006

Dated this the 22nd day of January, 2007

ORDER

This revision petition is directed against a concurrent verdict of guilty, conviction and sentence in a prosecution under Section 138 of the N.I Act. The cheque is for an amount of Rs.50,000/-. It bears the date 10.08.1998.

2. The complainant examined himself as PW1 and proved Exts.P1 to P9. The accused did not adduce any evidence, oral or documentary. Notice of demand though duly received and acknowledged, was not replied to also.

3. The courts below in these circumstances came to the conclusion that the complainant has succeeded in establishing all ingredients of the offence punishable under Section 138 of the N.I.Act. Accordingly they proceeded to pass the impugned concurrent judgments. The petitioner now faces a sentence of S.I for a period of six month and to pay an amount of Rs.50,000/- as compensation under Section 357(3) Cr.P.C. No default sentence was imposed.

4. Called upon to explain the nature of challenge which the petitioner wants to mount against the impugned concurrent judgments, the learned counsel for the petitioner only prays that leniency may be shown on the question of sentence. No other

contentions are raised. I find the verdict of guilty and conviction to be absolutely justified. No interference is warranted at all with the verdict of guilty and conviction.

5. Coming to the question of sentence, I find merit in the prayer for leniency. I have already adverted to the principles governing imposition of sentence in a prosecution under Section 138 of the N.I Act in the decision reported in **Anilkumar v. Shammi** [2002(3) KLT 852]. I am satisfied that in the facts and circumstances of this case, it is not necessary to impose any deterrent substantive sentence of imprisonment on the petitioner. Leniency can be shown on the question of sentence, but it will have to be zealously ensured that the complainant who has by now been compelled to fight two rounds of legal battle and to wait from 10.08.1998 for the redressal of his genuine grievance, is adequately compensated. The challenge can succeed only to the above extent.

6. In the result:

a) This Crl.R.P is, allowed in part;

b) The impugned verdict of guilty and conviction of the petitioner under Section 138 of the N.I Act are upheld;

c) But the sentence imposed is modified and reduced. In supersession of the sentence imposed on the petitioner by the courts below, he is sentenced to undergo imprisonment till rising of court. He is further directed under Section 357(3) Cr.P.C to pay an amount of Rs.70,000/- (Rupees Seventy Thousand only) as compensation and

in default to undergo S.I for a period of 2 months. If realised the entire amount shall be released to the complainant.

7. The petitioner shall appear before the learned Magistrate on or before 22.03.2007 to serve the modified sentence hereby imposed. The sentence shall not be executed till that date. If the petitioner does not so appear, the learned Magistrate shall thereafter be at liberty to execute the modified sentence hereby imposed.

8. Hand over a copy of this order to the learned counsel for the petitioner forthwith for production before the learned Magistrate.

(R.BASANT, JUDGE)

rtr/-